

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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MARK A. FAVORS, et al.,

Plaintiffs,

ORDER

-against-

11-CV-5632 (DLI)(RR)(GEL)

ANDREW M. CUOMO,
as Governor of the State of New York,
et al.,

Defendants.

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ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

Not surprisingly, given the relatively insular nature of the election law bar, it has come to the Court's attention, through discussions with its technical consultant, Professor Nathaniel Persily, that he has had professional interactions with attorneys representing various parties to this action. Prof. Persily has assured the Court that these relationships and communications will in no way influence his work in this case. This Court further assures the parties that its recommendations to the Three-Judge Panel will represent this Court's independent judgment. Nevertheless, in the interest of full disclosure, the Court briefly identifies those relationships.

First, between 1998 and 1999, Prof. Persily and Eric Hecker, counsel for defendants Sampson and Dilan, were judicial law clerks for Judge David S. Tatel of the U.S. Court of Appeals for the District of Columbia Circuit. Additionally, in 2000, Prof. Persily and John R. Cuti, counsel for defendants Sampson and Dilan, served as co-counsel to John McCain in Molinari v. Powers, 82 F.Supp.2d 57 (E.D.N.Y. 2000). In 2004-2005, in advance of publication, Michael A. Carvin, counsel for defendants Skelos, Lopez, and Nozzolio, reviewed Prof. Persily's 2005 article, *When Judges Carve Democracies: A Primer on Court-Drawn*

Redistricting Plans, 73 George Washington University Law Review 1131 (2005), and was thanked in the article for his efforts. Further, Prof. Persily moderated a panel at the National Conference of State Legislatures in 2011, in which Mr. Carvin participated. Similarly, in 2011, Prof. Persily and attorney Marc E. Elias, who represents the Rose intervenor-plaintiffs, both spoke at an ALI conference on election law and serve on an ALI election law-related advisory board.

In addition, consistent with the understanding of the Court and the parties -- as discussed at the conference before the undersigned magistrate judge on February 27, 2012 -- that all parties would have access to the data provided to Prof. Persily by LATFOR, the parties are advised that on February 28, 2012, Prof. Persily contacted Debra Levine of LATFOR and requested ACS data, but was informed that LATFOR does not maintain such data.

Finally, the parties are advised that on either February 27 or 28, 2012, either before or shortly after Prof. Persily's appointment to this case, and while he was unaware that Glenn D. Magpantay was representing a party to this action (i.e., the Lee intervenor-plaintiffs), Prof. Persily emailed Mr. Magpantay to request a copy of the Unity map (which was referenced during the February 27th court proceeding). Mr. Magpantay responded by email on February 28 and 29, attaching two versions of the map, which will be posted to the Court's website.

SO ORDERED.

**Dated: Brooklyn, New York
February 29, 2012**

**ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE**